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IN THE

Supreme Court of the United States

OCTOBER TERM 1951

Nos. 401 & 414

KONRAD G. JOHANSEN,
Petitioner

v. No. 401

UNITED STATES OF AMERICA
On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

SAMUEL MANDEL, ADMINISTRATOR OF THE ESTATE OF ROBERT WILLIE DILLEHAY, JR., DECEASED,
Petitioner

v. No. 414

UNITED STATES OF AMERICA
On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION AND PETITION OF HERBERT L. JOHNSON AS AMICUS CURIAE FOR REHEARING

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THE RELIANCE PRESS OF NORFOLK, VA., INC.

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MOTION AND PETITION OF HERBERT L. JOHNSON AS AMICUS CURIAE FOR REHEARING

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States

Your Petitioner, Herbert L. Johnson, who was the successful libellant in the case of Johnson v. United States (4 CCA, 1950), 186 Fed. (2d) 120, as amicus

curiae, respectfully moves this Honorable Court for leave to file this, his petition for rehearing, in the above entitled causes in which the opinion of this Court was rendered on May 26, 1952, and in support of said motion alleges as follows:

REASONS FOR GRANTING REHEARING

1. Your Petitioner, Herbert L. Johnson, was employed by the United States Maritime Commission, Norfolk, Virginia, on September 3, 1946, and thereafter assigned duties as a deckhand aboard the Commission's Patrol Boat No. Q-14, which vessel was used for patrolling the James River Fleet of laid-up merchant vessels. On October 13, 1946, and while Your Petitioner was engaged in pumping the vessel's bilges the officer in charge of said vessel endeavored to start the vessel's engines, causing an explosion and fire thereon. Your Petitioner suffered severe and painful injuries when he became enveloped in flames and escaped death by throwing himself into the waters of the James River from where he was subsequently rescued.

2. Petitioner instituted an action in the United States District Court for the Eastern District of Virginia, Norfolk Division, by filing a libel in personam against the United States of America as owner of Patrol Boat No. Q-14, to recover damages for injuries received as result of the explosion aboard said vessel. Petitioner proceeded under an Act of Congress approved March 23, 1925, commonly known as the Public Vessels Act, 46 U.S.C.A., Section 781, 790, inclusive, and alleged a cause of action under an Act of Congress approved June 5, 1920, commonly known as the Jones Act, Title 46 U.S.C.A., Section 688.

3. The United States of America filed exceptions, exceptive allegations and a motion to dismiss, alleging in substance that a seaman serving aboard a public vessel had no right to sue the United States under the Public Vessels Act, but was limited to the acceptance of compensation under the Federal Employees Compensation Act of 1916, 39 Stat. 742, Title 5 U.S.C.A. Section 751, et seq.

4. The United States District Court for the Eastern District of Virginia, Norfolk Division, determined that Your Petitioner was not compelled to accept compensation as above mentioned, but had the optional right to sue his employer, the United States of America, in admiralty for damages, 89 Fed. Supp. 65. From the determination of this issue by the District Court the United States of America appealed.

5. The United States Court of Appeals for the Fourth Circuit affirmed the District Court and determined that a seaman serving on a public vessel of the United States was entitled to recover under the Public Vessels Act for such injuries, notwithstanding that he was entitled to compensation under the Federal Employees Compensation Act, 186 Fed. (2d) 120.

6. The cause was remanded to the United States District Court for the Eastern District of Virginia, Norfolk Division, for trial on the merits.

7. Further proceedings were had in the United States District Court for the Eastern District of Virginia, Norfolk Division, on October 26, 1951, and findings of fact, conclusions of law and a final order were entered on December 17, 1951, awarding to Your Petitioner a judgment in the sum of Twelve Thousand

Three Hundred Forty-six Dollars and Three Cents ($12,346.03).

8. The United States of America noted an appeal from this award and said cause is now pending on appeal before the United States Court of Appeals for the Fourth Circuit.

9. Your Petitioner anticipates that the United States Court of Appeals for the Fourth Circuit will re-examine the right of a seaman serving on a public vessel to sue the United States of America under the Public Vessels Act in the light of the opinion of this Court in the above entitled causes rendered on May 26, 1952.

10. Your Petitioner has studied the opinion of this Court rendered on May 26, 1952, and believes that his views which were so carefully weighed and considered by the Court of Appeals for the Fourth Circuit in Johnson v. United States, supra, were apparently not fully presented to this Court. Therefore, Your Petitioner prays that he be afforded an opportunity to express his views to this Court so that the judgment which he has obtained against the United States of America in said case may not be lost.

11. Your Petitioner is advised and believes that there are numerous other persons in like position who will also suffer loss without having been afforded an opportunity to express their views on a question which vitally affects their interest.

12. Your Petitioner submits that this Court has liberally construed the language of the Public Vessels Act, Title 46, U.S.C.A. 781, 790, inclusive, in *Canadian Aviator, Ltd. v. U. S.* (1945), 324 U. S. 215, 65 S. Ct.

639, 89 L. Ed. 901, and *American Stevedores v. Porello* (1947), 330 U. S. 446, 67 S. Ct. 847, 91 L. Ed. 1011. This liberal construction should not now be constricted in the absence of Congressional intent. This Court has indicated that the Legislative history of that Act is silent as to such intent.

CONCLUSION

Equity and justice requires that this Court grant a rehearing in the above entitled causes so that Your Petitioner and all other persons similarly situated may be afforded an opportunity to file their briefs and be heard in support of the right of a seaman serving on a public vessel to sue the United States of America under the Public Vessels Act.

Respectfully submitted,

R. ARTHUR JETT,
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the Rules of this Court.

R. ARTHUR JETT,
Counsel for Petitioner